the Registrar of Titles so as to enable the said registrar to register the transfer No. I/3777A and the mortgage No. I/3778A and was intended to take effect only when the transfer and the mortgage could be registered.

Section 106 only provides the mode of withdrawal and it is to be noted that there is no provision in the Act similar to section 103(2) as regards withdrawal of caveat. In other words the Act does not provide that a withdrawal of a caveat is to take effect on lodgment as in the cases of a caveat. In my view the withdrawal of a caveat does not take effect on lodgment but only when it is registered.

The application is dismissed with costs.

Application dismissed.

Solicitors: *Hilborne & Co.; Ong Swee Keng & Co.*

RALPH v. PUBLIC PROSECUTOR

[O.Cr.J. (Winslow J.) April 14, 1972]

[Singapore — Criminal Motion No. 14 of 1972]

Criminal Law and Procedure — Bail — Granting of — Pending appeal — No special reasons — Discretion of court — Criminal Procedure Code (Cap. 113, 1970 Ed.) s. 351.

This was an application under section 351 of the Criminal Procedure Code, for the applicant to be admitted to bail pending his appeal against his conviction on four charges of corruption and one charge of criminal breach of trust in respect of $102,784,96 for which he was sentenced to 2 years' imprisonment in all.

It was stated in the affidavit in support of the application that the learned senior district judge had failed or refused to exercise his discretion in the matter. The affidavit also referred to the length of the imprisonment in comparison with the length of time which is likely to elapse before the appeal is heard, to the effect that this was the first conviction of the appellant and that he was of good character.

Held, dismissing the application: it had not been shown that the learned district judge had exercised an arbitrary discretion in the matter.

Cases referred to:-

(1) *Johore* v. *R.* (1907) 11 S.S.L.R. 36.

(3) *R.* v. *Lim Soh Chwee & Anor.* B.C.G.H. 178.

(3) *Doraisamy* v. *Public Prosecutor* (K.L. Criminal Application No. 2 of 1954 — unreported).

(4) *Re Kwan Wah Yip* [1954] M.L.J. 146.

(5) *Goh Beow Yam* v. *R.* [1956] M.L.J. 251.

(6) *R.* v. *Tan Tee* [1948] M.L.J. 153.

CRIMINAL MOTION.

H. L. Wee for the applicant.

Loh Lin Kok (Deputy Public Prosecutor) for the Public Prosecutor.

Winslow J.: This is an application to the High Court under section 351 of the Criminal Procedure Code (Cap. 113) for the applicant to be admitted to bail pending his appeal against his conviction on four charges of corruption and one charge of criminal breach of trust in respect of $102,784.96 for which he was sentenced to 2 years imprisonment in all.

It is undisputed that both the district court and the High Court have a discretion in the matter to admit him to bail. It is stated both in the affidavit in support of the application and from the Bar by Mr. Harry Lee Wee, counsel for the applicant, that the learned senior district judge brushed aside the application for bail after conviction and sentence with the remark that he never granted bail unless there were very special reasons and that, by refusing to grant bail, he failed or refused to exercise his discretion in the matter.

For the purposes of this application to the High Court under section 351, I am not really concerned with this matter in an appellate capacity as to his refusal to grant bail. I therefore propose to deal with the matter in the light of the relevant consideration advanced by his wife in the affidavit filed in support of the application with a view to deciding whether I should exercise my discretion in his favour.

I have carefully considered the trend of judicial opinion relating to the relevant factors to be weighed in the balance before the discretion to grant bail is exercised. At one stage, in 1907 and, later, in 1911 Fisher J. expressed an opinion, which appears to have been acted upon for many years, to the effect that execution should be stayed pending appeal on the finding of reasonable security by a person convicted before the subordinate courts (see *Johore* v. *R.*[1] and *R.* v. *Lim Soh Chwee & Anor.*[2]).

In 1954, in the unreported case of *Doraisamy* v. *Public Prosecutor,*[3] Wilson J. observed that a stay of execution should not be granted (under a provision similar to our section 241 of the Criminal Procedure Code) unless there are special reasons for doing so. He was also of the view that the mere fact that the applicant had been advised and verily believed that he had good grounds for appeal did not constitute sufficient grounds for releasing the applicant pending his appeal.

Later in the same year, Spenser Wilkinson J. in *Re Kwan Wah Yip*[4] found himself in substantial agreement with the views expressed by Wilson J. He also said:

"When a lower court has refused bail then I agree that the High Court should not interfere with the discretion of the lower court unless there are good reasons for so doing and as the High Court has not heard the case such reasons must be set out in the affidavit in support of the application for bail. There may be cases in which a magistrate has made an error in law that is obvious on the face of the record and there may also be cases where it is plain that a magistrate has seriously misinterpreted the facts. Circumstances such as these might be reasons if properly set out in the affidavit which would induce the High Court to grant bail where the lower court has refused it.

It seems to me, however, that the granting of bail pending appeal by the lower court being a matter of discretion a magistrate may, apart from the accused's statement that he intends to appeal, find in the circumstances of the case before him reasons which would justify the granting of bail. The considerations which I suggest should guide the subordinate courts in granting or refusing bail pending appeal in cases where a term of imprisonment has been imposed are the gravity or otherwise of the offence; the length of the term of imprisonment in comparison with the length of time which is likely to take for the appeal to be heard; whether there are difficult points of law involved; whether the accused

is a first offender or has previous convictions; the possibility of his becoming again involved in similar or other offences whilst at liberty; and whether the security imposed will ensure the attendance of the appellant before the appellate court."

In 1956, Whyatt C.J. in *Goh Beow Yam* v. *R.*[5] agreed with the views expressed by Spenser Wilkinson J. but added that the considerations set out by the latter should not be regarded as an exhaustive list. The learned Chief Justice then dealt with the application before him on the basis of a consideration not included in the list set out by Spenser Wilkinson J. and dismissed the application on the ground that the magistrate concerned was fully justified in refusing bail where a person, after pleading guilty and being convicted and sentenced therefore, changed his mind and sought to withdraw his plea on the ground that he had not understood the charge. The learned magistrate was quite satisfied that he fully understood the charge before pleading guilty and was unimpressed by his desire to withdraw his plea. Whyatt C.J. held that the magistrate had, in effect, not acted on some wrong principle.

On the facts spelt out in the affidavit in support of the application before me under section 351 I am satisfied that the senior district judge at the trial, by his use of the expression "special reasons", when he refused bail, must have been aware of *Doraisamy's* case *supra*, where this expression was first used and *Kwan Wah Yip's* case where Spenser Wilkinson J. listed the considerations to which I have already referred.

The affidavit before me refers to the length of the term of imprisonment in comparison with the length of time which is likely to elapse before the appeal is heard which the deponent thinks will take from 6 months to 2 years, that this is his first conviction and that he is of good character and so on. She has not said anything about the gravity or otherwise of the offences of which he has been convicted.

In my view, most of these considerations must already have been known to the learned senior district judge by the conclusion of the trial and he could not have failed to take them into account at the time when he was required to impose sentence, which he did in about 3 days after he had convicted the appellant. I cannot say that it has been shown that he exercised an arbitrary discretion in the matter.

There are no new or compelling reasons set out in the affidavit which require me now to exercise my discretion in the matter in favour of the applicant. As Whyatt C.J. said, Fisher J. took the somewhat extreme view that bail should be granted in almost every case unless there was strong reason to suppose the appellant would abscond. I am aware that in the earlier part of this century it appears to have been the practice for magistrates to allow bail to convicted persons unless they had reasons for not allowing it. The usual reason was the expectation that the appellant would abscond (See *R.* v. *Tan Tee*[6]). Subsequent decisions to which I have referred earlier in this judgment make it clear that this is not the only reason for refusing bail.

The applicant's guilt of a serious offence involving dishonesty has been proved to the satisfaction of a competent court after a lengthy trial. Every opportunity to vindicate himself has been afforded to him with the attendant glare of publicity sufficient to ensure the application of the best legal skills in the land not only on his behalf but in the interests of society as well. I am satisfied from what I know and have been informed as to the length of time it will take for the appeal to be heard that it is unlikely that it will not be heard within the next 3 to 4 months and I would exhort those responsible for the preparation of the record to be as expeditious as they can in order to ensure that it will be so heard.

In comparison with another lengthy record recently which took only a little over four months to be heard notwithstanding the fact that grounds of decision were not delivered until sometime after conviction, I understand that in the present case grounds of judgment were in fact delivered on the date of conviction itself and are already available.

Although they are now ready, no sufficient ground has been advanced in the affidavit to satisfy me that there are serious defects or demerits in that judgment which necessitate my intervention to the extent of granting bail on the ground that his chances of success are so good as to warrant his release from incarceration now.

The other reasons pleaded such as the effect of imprisonment on his wife and family at the present time, his good character and so on are reasons which, whilst they may arouse sympathy, many other convicted persons can also advance. As I have already said, they are not however the only considerations to be borne in mind.

The application is dismissed.

Application dismissed.

Solicitors: *Braddell Bros.*